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MAR 21 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1971

No. 71-979

CITY OF CHICAGO, ILLINOIS, *ET AL.*, *Petitioners*

v.

FEDERAL POWER COMMISSION, *Respondent*

On Petition For A Writ Of Certiorari To The
United States Court of Appeals
For The District Of Columbia Circuit

Memorandum For Respondent Consolidated Gas Supply Corporation In Opposition

David E. Weatherwax
445 West Main Street
Clarksburg, West Virginia 26301

Henry P. Sullivan
4 Gateway Center
Pittsburgh, Pennsylvania 15222

Norman A. Flaningam
Charles R. Brown
1101 16th Street, N.W.
Washington, D.C. 20036

Attorneys for
CONSOLIDATED GAS SUPPLY
CORPORATION

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BEACON PRINTING – 293-7160 – Washington, D. C. 20006

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Consolidated Gas Supply Corporation (Supply Corporation), which was made a respondent by the Federal Power Commission (Commission) in the administrative proceedings below and was an active intervenor in the subsequent review proceedings in the District of Columbia Circuit Court of Appeals, strongly opposes the Petition for Writ of Certiorari filed in this proceeding respecting the Commission's policy determination that new natural gas production by pipelines or their affiliates from future-acquired leases should be priced in accordance with the same cost framework and area rate ceilings which the Commission applies in regulating the new gas rates of independent producers under the Natural Gas Act of 1938, as amended.

COUNTERSTATEMENT OF THE CASE

Supply Corporation hereby adopts the Counterstatement of the Case contained in the "Brief In Opposition Of The Pipeline Production Group" filed herein March 1, 1972 (pp. 1-6).

COUNTERSTATEMENT OF THE QUESTION PRESENTED

Petitioners' statement of the principal question is incorrect. The fundamental issue presented here is: Did the Commission err in adopting the cost-based, judicially-sanctioned area rate method as a regulatory tool for determining the value for rate-making purposes of the natural gas to be produced by pipeline companies from new leases?

CONSOLIDATED GAS SUPPLY CORPORATION'S INTEREST

Supply Corporation[1] is a subsidiary of Consolidated Natural Gas Company, a public utility holding company, which owns and operates a large natural gas system engaged in all phases of the natural gas business, i.e., the production, purchase, gathering, transmission, storage and distribution of natural gas, as well as the extraction and sale of by-products. In addition to Supply Corporation, the Consolidated System includes four distribution companies that are subject to regulation by State or local agencies—The East Ohio Gas Company, The Peoples Natural Gas

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[1] Supply Corporation is a "natural-gas company" within the meaning of the Natural Gas Act [52 Stat. 821 (1938); 15 USC § 717(b), *et seq.*] and, as such, its rates and charges for sales made in interstate commerce for resale are subject to regulation by the Commission.

Company, The River Gas Company and West Ohio Gas Company. Consolidated Natural Gas Service Company, Inc., the System's service company, and Consolidated System LNG Company (a new company formed for the purpose of importing supplies of liquified natural gas from Algeria, *inter alia*) are also included in the System.

The Consolidated System renders gas service to some of the nation's major industrial centers in the four-State area of West Virginia, Ohio, Pennsylvania and New York. As of 1971, the System supplied gas for more than two million domestic, commercial and industrial customers located in over 1,500 cities and towns having a population of more than 10,500,000; in 1971, its sales exceeded 844 billion cubic feet, producing revenues of about $650 million (78% from retail sales and 22% from wholesale sales).

Supply Corporation functions as the principal supply arm of the Consolidated System. It produces natural gas in both the Southern Louisiana and Appalachian areas. This production supplies about 10% of the System's requirements. The bulk of the System's supply (75%) is purchased from six interstate pipelines—namely, Texas Eastern Transmission Corporation, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, Panhandle Eastern Pipe Line Company, Transcontinental Gas Pipe Line Corporation and Columbia Gas Transmission Corporation. Five of these pipelines have their own production operations—either directly or indirectly through affiliated companies.

Until the fall of 1968, the Consolidated System experienced no difficulty in obtaining the additional new supplies that it required. Since then, however, the System has been unable to purchase any additional firm, flowing supplies of natural gas on a long-term basis, despite

continuous efforts to acquire such additional supplies.[2] Indeed, three of the System's pipeline suppliers have already been unable to deliver the full volumes of natural gas required by their sales contracts. As a consequence, the System was forced early in 1970 to adopt a restrictive sales policy, namely, not to attach any new industrial or large commercial loads and not to sell gas to existing industrial customers for use in new processes.[3]

Faced with the declining availability of domestic supplies, the Consolidated System, in order to maintain existing service levels and meet a portion of the projected

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[2] The Consolidated System has been advised by its suppliers that their inability to sell Consolidated additional volumes of natural gas stems from the fact that there is a shortage of new gas reserves available for purchase in the interstate market. Evidence that the shortage has reached serious proportions was presented to this Court in the recently-filed Petition for Writ of Certiorari submitted by the Solicitor General for the Commission. "Motion For Expedited Consideration And Petitions For Writs Of Certiorari To The United States Court Of Appeals For The Fifth Circuit" in *Federal Power Commission v. Louisiana Power & Light Co.*, October Term, 1971, certiorari granted March 6, 1972, where Petitioners sought review of the Appellate Court's denial of the Commission's jurisdiction "over allocation of gas supply of an interstate pipeline company *when the company's gas supply is insufficient to meet its total contractual commitments.*" (Emphasis supplied)

[3] Similar restrictive sales policies were adopted by the System's wholesale customers at Consolidated's request. Even more restrictive sales policies were recently imposed on the Consolidated System's wholesale customers operating in New York and Pennsylvania by the New York Public Service Commission and Pennsylvania Public Utility Commission, respectively. See Orders issued October 26 and December 16, 1971, in New York Commission Case No. 25,766, and February 1, 1972, in Pennsylvania Commission investigation Docket No. 124.

growth in its requirements, has embarked on an extensive program to obtain supplemental supplies from non-conventional sources. Consolidated System LNG Company has pending before the Commission at Docket No. CP71-153 an application seeking authorization to import substantial quantities of LNG from Algeria. Also pending before the Commission at Docket No. CP72-100 is an application by Tecon Gasification Company to construct and operate a plant to be used to convert liquid naphtha (largely imported) into pipeline-quality gas, and to sell 200,000 Mcf per day of SNG to Supply Corporation. Gas supplies from these sources will be considerably more costly than conventional domestic sources.

REASONS FOR DENYING THE WRIT

The "Reasons For Denying The Writ" set forth in "Brief In Opposition Of The Pipeline Production Group" (pp. 7-14), dated March 1, 1972, are hereby adopted by Supply Corporation.

Supply Corporation submits an additional reason for denying the Writ. Although it is clear from Opinion No. 568 that the Commission did not ground its policy decision on a claimed supply shortage, it noted that it was arriving at its conclusion (Pet. App., pp. 62a-63a):

> "...at a time when there are indications of a shortage of gas and a threat of a greater shortage in the future. For instance, for the first time the American Gas Association reported that in 1968 net gas production exceeded the reserves added resulting in a decline in total proved reserves from 292.9 trillion cubic feet to 287.3 trillion cubic feet by the end of 1968.[8]

> "While the 1968 figures are not in the record, the present trend is reflected by the record. Preeminent are the reserve-production ratios showing the ratio of reserves to production during the year. This ratio, for the United States, with some slight ups and downs, has trended generally downward from 22.1 in 1955 to 14.8 in 1968."
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> [8]AGA Committee on Annual Gas Reserves; Report issued April 7, 1969."

In adopting a policy of henceforth treating pipeline producers on a parity with independent producers, the Commission made it plain that it intended to encourage "... intensive exploration by pipeline producers." (Pet. App. p. 69a) Events which have transpired since October 7, 1969, the date on which the Commission issued its Opinion No. 568, have even more clearly revealed the increasingly critical nature of the nation's gas shortage and the need to encourage the search for new gas reserves. Today, the shortage of new supplies is so severe that Supply Corporation, its affiliated gas distributors and its non-affiliated utility customers are faced with a serious supply problem—so serious, in fact, that the Consolidated System has been compelled to resort to costly import-based natural gas substitutes, *supra*, pp. 3-4.

Supply Corporation believes that the Commission policy adopted in its Opinions Nos. 568 and 568-A will promote a resurgence of pipeline production activities, thereby alleviating the current shortage of new supplies of natural gas available for purchase in the interstate market.

CONCLUSION

For these reasons, the writ should be denied.

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